

## **IMPLEMENTATION OF POLICE DECISIONS IN THE PROCESS OF LAW ENFORCEMENT AND GUARANTEE OF HUMAN RIGHTS IN INDONESIA**

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### **ABSTRACT**

The police mission is a mission equipped with might and authority that aims to expedite the execution of its duties. In terms of the effective and efficient fulfillment of police duties, he is given discretion or discretion based on the personal assessment of police personnel, where that discretion is part of the law enforcement process and is not without limits. When its implemented, the position of police discretion has its limits which are regulated by laws and regulations. Written or unwritten invitations. recruitment of police officers should be based on assessing the level of intelligence, having sharp analytical skills on problems, understanding social problems, and always thinking so that the focus is not on standard rules. Then develop with experience, Knowledge through training, and education to be current decisions are made in the public interest without violating human rights.

**Key words:** Application, Discretionary Acts of the Police

### **INTRODUCTION**

In Article 1 of Law Number 2 of 2002 on the Indonesian National Police (Polri) “Police is all matters relating to police functions and institutions by legal regulations. “Then, in Article 2, it was stated that “the function of the police is one of the functions of the state government in the field of maintaining security and public order, law enforcement, protection, protection, and community service” while “the police institution is a government agency designated as an institution and granted the authority to carry out tasks based on legal regulations. “Hence,

regarding the police function which is one of the functions of the government as stipulated in Law No. No. 2 of 2002 on the National Police in terms of the essence of the main duties of the police, which are the duties and responsibilities of the government, the position of the Police Law cannot be separated from the State Administration Law as the basic law of governance. (Atmosudirdjo, Prajudi, 1981) The Police Act is positive law that generally provides a basic concept of police administration that is then applied in the police administration system. The essence of policing is to carry out the duties and powers of the police which are shaped into key tasks and powers obtained through delegation and delegation. The duties and powers of the police as law enforcers essentially apply positivist law in the administration of government, in which the application of law as a concrete measure in legal practice is supported by legal sciences such as legal philosophy, legal history, legal theory, and legal dogmatism. (Hartono, Sumaryati, 2003) With an understanding of police law, the application of the law in practice will be in line with the ideals of law and authority, and they must judiciously face opposition that often threatens their safety. In order to defend itself, the police are often forced to resort to violence in the performance of their duties and powers. Indeed, as a law enforcement official who simultaneously performs the function of social control, acts of violence or coercion by the police are legal. This is related to the theory that “there are many ways in which social control can be done within the process of social control, both in a disguised way (without violence) and in a coercive way (by force)<sup>1</sup>.” He further said Satjeptoo Raharjo, that “the police are the embodiment of the state's monopoly on the commission of acts Violence”. (Basah, Sjachran, 1997) Justified by law, i.e. that which in essence is carried out when it is in a state of extreme coercion, but an act of police violence cannot be used carelessly under the pretext that it is in a state of coercion. Although we know that the use of force is prohibited by regulation in both international human rights instruments relating to protection from arbitrary treatment and Torture, as well as the Indonesian Criminal Procedure Code rejects and prohibits the use of force by government officials against a person, but it still happens. Moreover, in carrying out its preventive duties, the police need enforcement measures in many forms, as well as repressive, non-judicial tasks that are in the public interest, which require action and depend on the reaction of society. As said by Satjeptoo Raharjo, for the police, the use of force is functional while society considers it an exception. The police are a bureaucratic apparatus equipped with a Monopoly on the use of force. (Brotodiredjo, Subroto, 1984) No other body may by law exercise such power. No prosecutors, no judges, no army. Because the police are at the center of society and since the police have a monopoly on the use of force, it will cause an imbalance when the police have to deal with the public. In addition, giving strength and power to the police is necessary to perform their duties, that is, to carry out social control, maintain security and deal with crime. The law cannot regulate all actions to be taken by the police, and the law is only able to define the type of action with many nuances. So the law only defines the principle of police action, i.e. the plichtmetigheid principle based on which the police are given freedom of action as long as such action is necessary and does not go beyond the limits of its obligations. (M, Hardjon Philipus, 1993) In this way, the police are not only guardians of the status quo of the law but many interesting things are found when we observe the police more broadly, which means that they do not

just focus on the regulations that govern the duties of the police, they try to catch on and watch the number of the police in a way complete. From the description of the background, it can be seen that even when taking responsibility for carrying out tasks that are forced to be carried out by force, the police face some difficulties, because the use of force is situational in nature, and there is a subjective component associated with it, in addition to taking responsibility for other decisions that must be taken immediately in the face of crime, field accidents which are not uncommon without any law.

## **METHODOLOGY**

The research method used by the author is the normative legal research method. The data used by the authors in this study is secondary data by conducting studies related to the data in the library study which includes primary, secondary, and tertiary legal subjects. These legal materials can be found in the literature on the issues under study such as rules, regulations, bills, research findings, and even dictionaries. The data collected is processed and analyzed to answer the problems found in this study. As a major problem with this writing, then; What is the meaning contained in the secretions in the procedures of pronouncement of judgment? How is the community's legal protection against police discretion?

## **RESULTS**

Police discretionary law to get the same perception about understanding several definitions used in the discussion of police discretion and enforcement the meaning of policing, policing, police law, attitudes, discretion, oversight, mismanagement, and lawless actions will be explained. The term police has two meanings, namely to police in the formal sense, which includes an explanation of the organization and position of the police agency, and secondly in the physical sense, which is to provide answers to questions of duties and authority in the context of dealing with danger or reaching security and order within the framework of the general authority of the police through the provisions stipulated in laws and regulations. While the term police As stated in Law No. 2 of 2002 on Polri, all matters relating to police functions and institutions are by legal regulations. Law Police is the law that regulates the power of the police. According to Van Vollenhoven, police law enters into the scope of administrative law, administrative law includes government law, which corresponds to statutory law, police law, and court law. Police work is part of government work in the context of achieving government goals. A relevant governmental act is any action/action by a government agency, also outside the domain of governance law, for example, security, judiciary, etc. that intends to cause legal consequences in the domain of administrative law. Police legal action is an action within the framework of carrying out the main functions of the police which include maintaining security and order, providing protection and protection, community service, and law enforcement. These three tasks are based on the principle of legitimacy because the law gives legitimacy to the police authority in carrying out these three tasks. So the power of the police is based on legal regulations. Theoretically, the authority stemming from laws and regulations is obtained in three ways, namely, attribution, delegation, and delegation. The power of the police attribution, i.e. the power provided by the laws and regulations, Among those stipulated in Article 30 Paragraph (4) of the 1945 Constitution, Law No. 2 of 2002 regarding the

National Police, Penal Code. From the attribution authority comes the delegation and the authority of delegation, namely Giving authority from higher units to lower units (in the form of delegations), as well as delegating to other areas outside the structure. Due to the study of police law cannot be separated from administrative law and is an interrelated subject, the principles of administrative law also apply to the principles of police law. (Rahardjo, Satjipto, 2002)

Defining legal principles for the police can be categorized into three Collections, including 1) Principles relating to the implementation of the duties and powers of the police; 2) Principles of the law relating to the administration of the state; 3) General principles of good governance The term cannot be appreciated Separated by the inherent concept of power and the power to act, that is, the ruling official may not refuse Making decisions on the basis that “there are no rules” and therefore they are given the freedom to make decisions according to their opinions as long as they do not violate the principles of the judiciary and the principle of legality. It will be freedom of action within certain limits or flexibility in determining policies through the position of the actions of the state administration that must be accountable. As for the sources of police law, they can be studied from material legal sources and official legal sources. The material sources of the law, including historical factors, philosophical factors, and social factors that influence the formation of the police law, while the official sources of the police law, based on Article 7 of Law No. 10 of 2004, includes: the 1945 constitution; Government laws/regulations rather than laws; government regulations; presidential decree local regulation. (

In accordance with the issuance of Law No. 2 of 2002 on the National Police, this made more emphatic in terms of the limitations on the duties and powers of the police, including the function of the police as one of the holders of the functions of the state government, especially in the field of maintaining security and public order and mainly that the position of the police The Republic of Indonesia is no longer a component of the Armed Forces of the Republic of Indonesia. In other words, can be said that the principle underlying the use of police power, besides the principle of discretion there are other principles such as *rechtmatigheid* and *plichtmatigheid*, *rechtmatigheid* principle, i.e. the validity of each police action should always be based on law and principle *plichtmatigheid*. It is in the public interest that the police have the power to take such action as is deemed necessary by their obligations and responsibilities, and the principle of discretion, it is the power to act based on his judgment. The Code of Criminal Procedure provides that disposition based on an individual's judgment may be carried out in the following circumstances: (a) necessary circumstances; (B) do not conflict with laws and regulations; (c) It does not conflict with the Police Code of Ethics.

## **DISCUSSION**

State administration in the performance of public service duties Discretion is required, but the use of discretion is not permitted. It raises issues relating to politicking, repeal of law, and general principles of good governance, which will result in harm or suffering to other persons which may be classified as an illegal act. Police action against the law is linked to the institution and special police officers. Errors inherent in the institution, if the police service carried out the duties and powers of the institution that caused harm to people, while the errors inherent in the person of the police service, are committed intentionally by the



police service When they discharge their duties and powers in an irregular (non-arbitrary) manner, or the error was committed while carrying out the duties and authority of the police, even though the police position is attached to each member of the police regardless of the time on-duty police. If the errors committed relate to personal policemen who have been found guilty while carrying out their duties for other purposes, they shall deviate from them. The task is given so there is an error when carrying out police actions that result in harm to a person, the injured party can apply for compensation against the institution or person. litigation basis on Draft Section 1365 of the BW if it is clear that the police establishment or individual police officers are guilty of a violation of the law. While filing a lawsuit against the institution in case of violation The law or wrongdoing has already been committed by the institution, i.e. the action was carried out for and on behalf of the job, but breaking the law.

Based on Article 2 of Law No. Act No. 2 of 2002 on Poly, where the job of the police is wrong one state government, the police are part of the government officials or administrative officials or also called State administrative employee. As an official in the state administration, he will be subject to Law No. 9 of 2004 regarding Amendments to Law No. Law No. 5 of 1986 regarding the State Administrative Court. - Illegal acts committed by police officers and brought before the Administrative Court of the State, where the PTUN will examine state administrative disputes over whether decisions made by police officials are valid in carrying out their duties and powers. Don't shut down the possibility of filing a claim based on Section 1365 BW targeting the office (institution) for the actions taken by a member of the police or an organization that is guilty of an illegal act. Meanwhile, human rights violations committed by the police were taken to the Human Rights Court for human rights violations serious crimes (such as genocide (acts committed with the intent to destroy or destroy all or part of a national, racial, ethnic, or religious group) and crimes against humanity (any act committed as part of a widespread or systematic attack when it was known that the attack was aimed specifically at a civilian population direct) and to the Human Rights Commission for minor violations of human rights (among others persecution, murder, sexual violence). Thus, the police action includes several laws, namely administrative law, civil law, criminal law, and the law related to human rights violations. So the mistakes you make must be seen the police and its mapping, from the apparatus that deliberately or arbitrarily abused its power, legal aspects, and legal issues, the police apparatus must be viewed from the standpoint that the institution is organizationally responsible and on the other hand the police personnel are personally responsible for the risks involved doing unprofessional actions. (Soekanto, Soerjono, 1973)

## **CONCLUSION**

The discretionary use arrangements are sufficient because they have been put in place the full range of police discretion and limits, where in application the legal basis is the 1945 Constitution, Law Number 2 of 2002 on Poly, General Principles of Good Governance, Principles of State Administration and Police Doctrine. A police officer must adhere to more than just the regulations but to the community. Against the people's protection of police work in the event of an illegal act, he can be prosecuted, whether through administrative law, civil law, criminal law, or law relating to human rights. Recruitment of police officers should be based on

assessing the level of intelligence, having sharp analytical skills on problems, understanding social problems, and always thinking so that the focus is not on standard rules. Then develop with experience, Knowledge through training, and education to be current recall decisions are made in the public interest without violating human rights.

## **REFERENCES**

1. Atmosudirdjo, Prajudi, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta, 1981,
2. Basah, Sjachran, *Eksistensi dan Tolak Ukur Badan Peradilan Administrasi Di Indonesia*, Alumni Bandung, 1997.
3. Basah, Sjachran, *Perlindungan Hukum Terhadap Sikap Tindak Administrasi Negara*, UNPAD, Bandung, 1987.
4. Brotodiredjo, Subroto, *Polri Sebagai Penegak Hukum*, dalam Guru Pinandita, FE UI, Jakarta, 1984.
5. Basah, Sjachran, *Eksistensi dan Tolok Ukur Badan Peradilan Administrasi di Indonesia*, Alumni Bandung, 1985,
6. Hartono, Sumaryati, *Panduan Investigasi Untuk Ombudsman Indonesia*, Komisi Ombudsman Nasional, Jakarta, 2003,
7. M, Hardjon Philipus, *Masalah Pertanahan Dalam Peradilan Tata Usaha Negara*, Yuridika, FH UNAIR, Surabaya, 1993,
8. Rahardjo, Satjipto, *Polisi Sipil, Dalam Perubahan Sosial di Indonesia*, Buku Kompas, Jakarta, 2002,
9. Rahardjo, Satjipto, *Masalah Penegakan Hukum, Suatu Tinjauan Sosiologi*, Baru, Bandung,
10. Soekanto, Soerjono, *Pengantar Sosiologi Hukum*, Bharata, Jakarta, 1973